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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 2.

WILLIAM SCHNEIDERMAN

v.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FINAL MEMORANDUM FOR PETITIONER.

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FINAL MEMORANDUM FOR PETITIONER.

We pray the indulgence of the Court for this further memorandum. There, of course, must be an end of brief making, but there has been so much understandable confusion as to the record, evidently not cleared up by previous memoranda, and such a shifting of the Government's position, and such an interest by the Court in the important questions involved that we trust that what is set forth herein may be found to be helpful.

At the outset—Mr. Justice Roberts at the argument, if we correctly remember his statement, asserted that Schneiderman's counsel at the trial, after he had moved to strike out Exhibit 26, and the motion had been denied, had then stipulated that Exhibit 26 should be a part of

the record. We have been unable to find any such stipulation. It is true that in his first designation for the record, the attorneys for Schneiderman designated "One copy of all exhibits in evidence or offered for identification," but without reference to any numbers (R. 59), but this designation was clearly ineffective and was superseded by the designation upon which the record was apparently printed (R. 902), wherein the United States Attorney designated for the record "All of the plaintiff's Exhibits designated as excerpts from the printed exhibits" and "All of the defendant's Exhibits designated as excerpts from the printed exhibits". Schneiderman's counsel's Request for and Designation of Record specified "All excerpts from various pamphlets offered as exhibits." (See Supplemental Brief for Petitioner, pp. 6-11). Neither counsel designated any part of Ex. 26. Consequently no part of Ex. 26 is printed in the record.

I.

The pertinent documents and Schneiderman's activity in connection therewith.

The statute, in 1918, required that "It shall be made to appear to the satisfaction of the court * * * that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required * * *". (Act of June 29, 1906).

In order for another District Court, twelve years later, to set aside the decree of the naturalization court granting a certificate of naturalization on the ground of fraud or illegality, it should, we submit, be made to appear by positive and conclusive evidence that the naturalization court (if it had been in possession of all the evidence which was produced by the Government in the cancellation proceeding), had no right, *as a matter of law*, to be "satisfied" that the applicant had behaved "as a man • • • attached to the principles of the Constitution • • •". The proof in the cancellation proceedings should show unmistakably that even if the naturalization court had been in possession of the facts proven, it would have been an abuse of discretion for it to have been satisfied.

We submit that on the record in this case the Government entirely failed to produce proof of this character. The Government's proof consisted of the testimony of the petitioner, the testimony of Humphreys, an expelled and disgruntled ex-member of the Communist Party (R. 227, 228), the testimony of Hynes, a policeman, once, for eight months, a Communist Party member (perhaps not *bona fide*) (233) and certain documents.

A careful analysis of the proof takes on an added importance in view of the position taken by the Government for the first time at the argument, that the Government's main (in fact, it may be its only) reliance is on Schneiderman's own personal beliefs as showing lack of attachment to the principles of the Constitution. The Solicitor General, at the argument, stated that the Government does not rely on Schneiderman's mere membership in the Communist Party, and that the Government does not rely on imputing to him the statements contained in the writings of party members and party platforms, ex-

cept as he, by his own adoption thereof, imputed them to himself, and on the question of his personal beliefs, the Solicitor General stated that the Government did not place reliance on Schneiderman's own personal belief in force and violence.

It is therefore of the utmost importance to ascertain exactly what the proof is as to Schneiderman's personal beliefs in 1927, although, in this connection, it is "behavior" that is the test laid down by the statute, and not beliefs.

At the argument it appeared that the following question of fact had not been made clear to the Court:

1. What exhibits were officially circulated prior to the naturalization date in 1927?

2. What was Schneiderman's familiarity with these exhibits, as shown by the record?

3. What did the record show as to his zeal or activity in distributing the literature?

Answering Questions 1 and 2.

As to question 1, no documents prior to the constitution of the Communist Party of America of 1938 (R. 14) were officially accepted by the party organization as party documents (R. 364-365). Some of the ten documents which had been written or published prior to 1927 were utilized in study classes and were distributed among party members for consideration, with the approval of officers and teachers. As an illustration, the Communist Manifesto (Ex. 7) was so used; but it could not properly be said that the Communist Manifesto was ever an official document of the Communist Party of the United States. The proof as to the use of these documents, in classes or otherwise, and as to Schneider-

man's familiarity therewith is given in the Annex to this Memorandum.

In summary, we believe that it may be fairly and correctly stated that *there are only two documents* which meet the test of: (a) publication and circulation prior to 1927; (b) the use in classes and among party members, with the approval of teachers; (c) Schneiderman's familiarity therewith; and (d) use by him personally in connection with classes organized by him or in open forums conducted by him. These two documents are the Communist Manifesto (Ex. 7), and Left Wing Communism by Lenin (Ex. 9). As to both of these, the record consists simply of "Excerpts." As to both of these, it is clear that they were written by the author with a mind to, and directed toward, conditions outside the United States.

Answering Question 3 above, as to Schneiderman's personal activity in the distribution of the literature.

There is no positive, direct proof that Schneiderman ever distributed or disseminated any of the literature though the two documents (Ex. 7 and Ex. 11) were used in classes organized by him.

The testimony as to his activities is all found at pages 87-89 of the record, when he was called as a witness on behalf of the Government, and at pages 357-360 when his testimony was taken as a witness on his own behalf.

In 1922, at the age of 16, he was one of the organizers of the *Young Workers League of California*. He was "educational director" thereof and as such his functions or duties were to organize forums and classes for study. "* * * I did not teach them. I just organized them" (R. 87). These classes were "For the purpose of studying the theory of Marxism and the political and economic situation in the

countries." "They were open to anybody" (R. 87). He continued as such "educational director" for "two or three years" (R. 88), say up to 18 or 19. As educational director "I was not an instructor in the classes that were organized; my job was to register students in the classes and send out notices for meetings" (R. 359). In teaching the philosophy of the League there were used in the classes the Communist Manifesto of Marx (which is Exhibit 7), and Left Wing Communism (which is Exhibit 9) (Rec. 89). He did not recall whether State and Revolution by Lenin (Exhibit 8), or Theory and Practice of Leninism (which is Exhibit 11), were used (R. 89). He did not think Exhibit 11 was written at that time (R. 89). He did not think that Exhibit 8 was used at that time (R. 89, 127, 128).

In 1925, Schneiderman joined the *Workers Party* (R. 92). He became "corresponding secretary" of the Workers Party in 1925 and 1926 (R. 92, 358). His duties were to handle dues and membership records (R. 93). This Party maintained study classes and open forums to discuss the political and economic situation in the country and to teach the theories and practice of Marxism and Leninism, using practically the same books as were used in the Young Workers League (R. 94). Schneiderman participated in the conduct of the "open forums", but not in the study classes (R. 94). As corresponding secretary, he "wrote down the minutes and sent out communications for meetings" (R. 358). It was not an executive position or one in which he was a spokesman for the organization (R. 359). It was more or less a clerical job, taking minutes and writing letters (R. 359).

During all of this time he was going to school and was working his way through school (R. 358),—so the amount of time which he could devote to these jobs must have been relatively small.

Nowhere does it appear how large the classes were which Schneiderman succeeded in organizing in the two or three years following 1922 when he was the so-called "educational director". The likelihood, of course, is that they were not very large. Schneiderman summed up his activities in those years in this sentence "I considered myself more or less *a student* of Marxism rather than an executive officer of the Party" (R. 359).

In summary, on the question of his zeal in distributing the literature, Schneiderman's entire activity, as shown by the record, was that of an organizer of classes which studied the Communist Manifesto (Ex. 7) and Left Wing Communism (Ex. 9).

On such a record as to such inconsequential activity we do not believe that any court would have been justified in holding that his "behavior" was not the behavior of a man attached to the principles of the Constitution.

II.

Schneiderman's Beliefs.

The Solicitor General at the argument stated that the Government's reliance was on Schneiderman's lack of attachment to the Constitution as shown solely by Schneiderman's own statements as to his own beliefs, and the Government pointed to what Schneiderman had testified to at page 103 of the record as constituting that statement and as thus constituting the Government's case. [The Solicitor General also stated that later in the trial Schneiderman modified the testimony given at page 103.] If beliefs peacefully held and peacefully expressed are to be the tests of a man's behavior as one attached to the principles of the Constitution, then, as we understand it, the Govern-

ment rests itself on what Schneiderman says as to his own beliefs at pages 102 and 103 of the Record.

We are still of the view that the complaint in this proceeding, properly analyzed, in reality only charges that Schneiderman had not behaved as a person attached because he was a member of the Communist Party. (See Supplemental Brief for Petitioner, pp. 12 *et seq.*). The Government, however, has apparently abandoned that alleged ground of illegality and rests its case, as stated, on Schneiderman's own beliefs. We will therefore consider them.

This is the testimony as to Schneiderman's beliefs:

"During all this period" when he was a member of the various parties, he "subscribed to the principles of those parties" (R. 102). "I believed in the essential correctness of the Marx theory as applied by the Communist Party of the United States." I subscribed "to the philosophy and principles of Socialism as manifested in the writings of Lenin" (R. 103). (See similar testimony at R. 898).

When later questioned by his own counsel, he in a long statement elaborated his views as to what he had believed (R. 361 *et seq.*). Here, he said, among other things "My understanding and interpretation of the program, principles and practice of the Communist Party ever since I joined the Party were and are essentially the same as those enunciated in the present constitution of the Party" (R. 365).

As to the Communist Manifesto, when he was asked "*Do* you approve of the principles enunciated in this Communist Manifesto of Marx and Engels", he answered: "• • • I believe that these general principles of Marxism,

particularly as they applied to the period in which they were written and the country about which they were written, are entirely correct" (R. 122) (See also R. 878-879). "Did you approve of those principles when you were admitted to citizenship?" "* * * Yes, I did" (R. 123).

There is no clear specification of what constituted the "philosophy and principles of Socialism as manifested by the writings of Lenin", in which Schneiderman believed (R. 103). He did believe in the abolition of private property to the extent that the means of production should be owned by the Government (R. 870, 877, 878, 888 to 893). He did not believe in the abolition of countries or nationalities (R. 874, 876, 893 to 895). He believed that every working man has a country to which he owes allegiance (R. 876). He did not believe that, in the event the Communist Party became a majority party in the United States, it would be justified in using force and violence to bring about a change in the form of Government (R. 885). At the time of his admission, he believed that the spirit and letter of the Constitution should be applied in full force (R. 896-897).

On such a record, we submit it cannot be held that a cancellation court, twelve years after his admission to citizenship, must find as a matter of law that it was so clear that Schneiderman in 1927 held beliefs that showed such lack of attachment to the principles of the Constitution that the naturalization court before whom he appeared for naturalization was bound to say—in fact had no discretion in the determination as to whether it was "satisfied"—that it would not be legal for Schneiderman to become a citizen.

III.

What Are the Principles of the Constitution?

With much pertinency, the question was raised at argument by Mr. Justice Frankfurter as to whether the expression "the principles of the Constitution" was not so vague and indefinite in its meaning as to furnish no criteria to the naturalization court by which that court could determine the proper attachment.

The Government points to no authoritative statement of what constitutes "the principles of the Constitution", and we know of none. There would seem to be nowhere any specification which would enable a judge of the naturalization court, having obtained with sufficient definiteness a catalogue of the applicant's beliefs, to place them alongside the principles of the Constitution and determine whether the two were in harmony.

Depending upon the time, place and person, a great many divergent views would undoubtedly exist in the opinions of the courts and of public officials as to what constitute these principles. Is the entire framework of the Government one of the principles, or can one disbelieve in, *e. g.*, the electoral college. If the electoral college is not a principle, is a legislature composed of two bodies, one of the principles? Is the direct election of senators a principle? Is woman suffrage a principle? Is national prohibition a principle? Is the right of the federal government to collect income taxes a principle? Is Negro slavery a principle? Was the provision of the Fifteenth Amendment a principle prior to 1870 and is it now? Etc., etc. Certainly some basic principles of the Constitution are set forth in the First Amendment, in which the petitioner herein most heartily believes.

It is thus clear that the fate of the applicant for naturalization depends to a very large degree upon the personal predilections of the judge, as to whether he is a liberal or a conservative, and upon the particular time in the history of the country when the application was made, and upon the particular trend of public opinion at the time. And, having been granted naturalization, the applicant, nevertheless, throughout his lifetime, continues to be subject to a change in the temper of the times and a revision of opinion as to what are permissible views, and, again, to the personal predilections of the court before whom his certificate of naturalization is brought for cancellation. It is perfectly clear that Schneiderman might have met an entirely different fate at the date of his naturalization before two different district judges, and, in the present proceeding, he might have met with a different fate if he had come before a different judge in a different court of the Union. It is clearly inequitable that the applicant's obtaining of citizenship and his subsequent retention of citizenship should depend on so many factors of time, place and person not predictable in advance.

Further, Congress had expressly dealt with the subject of beliefs in the naturalization statute and had specified only two beliefs as being improper beliefs. The applicant had to set forth in his petition that he was "not a disbeliever in or opposed to organized government • • • nor a believer in the practice of polygamy".

This indefiniteness as to the principles of the Constitution and the specification by Congress of what should constitute forbidden beliefs strengthens our view that the emphasis of the statute in this matter is on the word "behavior", and consequently that the sum total of the language of the statute in this connection means, in essence, that the applicant

shall have behaved *as a good citizen* during the probationary period. (See further discussion on this point at pages 12 to 14 of our Reply Brief.) We, of course, do not contend that the teaching by an applicant for naturalization of proscribed beliefs (e.g., anarchy, polygamy, force and violence) would not constitute improper behavior.

Respectfully submitted,

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ANNEX.

A. The relevant prior-to-1927 documents.

Appendix 1 (p. 26) to the Petitioner's Reply Brief contains an "Analysis of the Documents and Literature Cited and Relied upon by the Government in its Main Brief." In its "Memorandum for the United States", filed on the eve of the argument, the Government makes a somewhat different analysis of these documents and the statement of the record with respect thereto. In the hope that it will be helpful, we have herein, in a different form, tabulated these documents in so far as it is claimed by the Government that they were circulated prior to 1927.

There are ten of these documents, as follows:

Exhibit 7—the Manifesto of the Communist Party (R. 123-127).

Exhibit 8—State and Revolution by Lenin (R. 128-143).

Exhibit 9—Left Wing Communism by V. I. Lenin (R. 144-147).

Exhibit 11—Theory and Practice of Leninism by Stalin (R. 158-160; 211-212).

Exhibit 12—Fourth National Convention Workers Communist Party of America (R. 240-247).

Exhibit 13—The Second Year of the Workers Party in America (R. 248-254).

Exhibit 16—A. B. C. of Communism (R. 187-192).

Exhibit 17—"The International Youth"—a magazine (R. 164, 270-272).

Exhibit 27—Programme and Constitution of the Workers Party of America (R. 275-312)
and

Exhibit 26—Statutes, Theses and Conditions of Admission
for iden. to the Communist International (R. 273-274).

With respect to this last exhibit, we think it is clear that it is not in evidence; it certainly is not in the record. See pp. 6 to 11 of petitioner's supplemental brief.

B. Date of the publication of the relevant documents in the United States.

Exhibit 7—Was published in 1848, but the edition shown petitioner at the trial and marked as an exhibit was published in 1932 (R. 123). This date does not appear in the record but is stated at page 151 of the main brief for the Government as being the date of the publication of the particular exhibit.

Exhibit 8—Apparently published under date of April 1924, (R. 129), though the record is devoid of proof as to when actually circulated in the United States by the Communist Party (R. 128). Schneidermann did "not recall" whether it was used in classes in 1922 to 1927 (R. 89) (see R. 207).

Exhibit 9—Purports to have been published in 1920 (R. 144). It was used in the classes organized by the Young Workers' League (R. 89 but see R. 144). In Schneidermann's opinion, it was not circulated until "several years after it was written" (R. 143), because there was no available English translation, Schneidermann not being able to fix the exact date (R. 143-144).

Exhibit 11—Probably circulated in 1924 and 1925 (Hynes, R. 238). The Government in its "Memoran-

dum for the United States", page 7, argues that it was published either in 1924 or in 1925 (see R. 159, R. 211-212).

Exhibit 12—There is nothing in the record which shows when this document was published or circulated. It purported to be a statement of action taken at the Fourth National Convention of the Workers Party of America, which was held in Chicago in August, 1925 (R. 241), and from this fact the inference is drawn that it was published and circulated at or about that time, but there is no direct proof of that fact.

Exhibit 13—There is nothing in the record which shows when this document was published or circuculated. It purported to be a report of the Central Executive Committee of the Third National Convention of the Workers Party of America held in Chicago in December 1923, and January 1924 (R. 249), and from this fact the inference is drawn that it was published and circulated at or about that time but there is no direct proof of that fact (R. 249).

Exhibit 16—According to the record the book came out somewhere between 1920 and 1924 (R. 163). As to its circulation, Schneiderman testified (R. 163):

"Was that the book used by the Communist Party, in the extension of its propaganda?

"I do not know whether it was; because this book was never accepted as an authorized version, and it was subsequently barred from use in all of our schools and open forums and discussions" (R. 163). Humphreys testified that the book was used as a textbook by classes in San Francisco in 1924 and 1925 (R. 185).

Exhibit 17—Some issues of this magazine were probably published before 1925 (R. 164). The police-

man Hynes testified that it was a magazine sold and circulated by Communist Party book stores, but published in England (R. 270). Petitioner was of the view that he must have read it when he was fifteen or sixteen years of age (R. 835).

Exhibit 27—There is proof that this particular exhibit or a copy of a similar book was circulated by the Party in 1922, when policeman Hynes joined the Workers' Party (R. 275, 233).

Exhibit 26—*for iden.* The record is devoid of proof as to when this document was printed in the United States or circulated. Hynes testified that the "document was taken in a raid from the Communists in the Bryson Building, on October 16, 1928 * * *. However, this book was not widely circulated or sold" (R. 274).

Schneiderman testified that with respect to this Exhibit 26 for identification "I have no recollection of this particular edition. There is nothing to identify where or how it was published. I do not know of any work of this kind being published by the Party * * *. I have no doubt that possibly a pamphlet called The Statutes and Resolutions of the Communist International, were sold there (in book shops to which Captain Hynes made reference); but I do not believe this was ever printed in the country; it looks to me like an English edition printed in England" (R. 836). Therefore, there is no proof as to when this document was ever printed in the United States and no proof of its circulation prior to the raid made by Hynes in 1928.

On the basis of the foregoing, we respectfully submit that the court in considering whether, twelve years afterwards, it should take Schneiderman's citizenship away from

him, should unquestionably refuse to give consideration to Exhibit 26 for identification, and should also, we submit, refuse to give consideration to documents so indefinitely established as Exhibits Nos. 8, 12, 13 and 17.

This leaves only Exhibits 7, 9, 11, 16 and 27 as to which there is some amount of satisfactory proof that the document was published and circulated in the United States prior to 1927.

C. The Official Character of the Relevant Documents.

As we have stated in the main text of this Memorandum, at page 4, the only document which has the official sanction of the Communist Party of America, or of any of its predecessors, is the Constitution of the Communist Party of 1938. When Humphreys or Hynes testified that certain documents were official publications, they were testifying as to what was not within their knowledge or what was not a fact. The fact that a document was published or circulated by the "literature department" merely showed that it was a document which the department felt should be studied.

Exhibit 7—The 1932 edition offered in evidence was admitted by Schneiderman to be an official translation (R. 122-123).

Exhibit 8—Admitted by Schneiderman to have been "circulated" by the "literature department" of the Communist Party (R. 128).

Exhibit 9—Admitted by Schneiderman to have been circulated by the Communist Party in the United States (R. 143).

Exhibit 11—Received in evidence on testimony of Humphreys that he had been taught "that all literature put out by the Communist Party, * * *"

was "controlled, owned and operated by the Communist Party" and that the Daily Worker Publishing Company "was an official publishing agency of the Workers Communist Party" (R. 211-212).

Exhibit 12—Received in evidence on testimony of policeman Hynes that he had seized a number of copies and bought additional copies in a store, and that the publication on its face says that it is an official publication and that "It was sold and circulated by the Communist Party in Los Angeles" (R. 240).

Exhibit 13—Received in evidence on testimony of Hynes that it was sold and distributed by the Communist Party book stores; that he had seized copies from Communist Party headquarters and that he knew of his own knowledge that it was "distributed by the Communist Party as their official report" (R. 248).

Exhibit 16—Received in evidence on testimony of Humphreys that the book was used as a text book in teaching classes by the Workers Communist Party in 1924 and 1925 (R. 185). However, Schneiderman testified that this "book was never accepted as an authorized version, and it was subsequently barred from use in all of our schools and open forums and discussions" (R. 163). This book could not be regarded, therefore, as an authorized publication.

Exhibit 17—Received in evidence on testimony of Hynes, similar to that given with respect to Exhibits 12 and 13 (R. 270) (see above). Schneiderman, however, testified, categorically, that this Exhibit 17, a magazine published in England, was not an official publication of the Communist Party (R. 835). We believe that his

testimony is entitled to more weight than the testimony of Hynes, particularly inasmuch as Schneiderman, who knew, testified that the book shops in which Hynes stated that the magazine was sold, were not book shops over which the Communist Party had any authority or control (R. 830). As tending further to show lack of official character, Humphreys testified that he had not used this pamphlet in his cla ses (R. 220).

Exhibit 27—Received in evidence on testimony of Hynes that he had received a copy of the "Programme and Constitution" when he joined the organization in 1922, and that, from his examination of the document, it represented the program of the Party (R. 275-276).

Exhibit 26—*for iden.* Offered for identification through Hynes, but not offered in evidence as he did not purport to give it an official character (R. 274).

We submit that the Hynes testimony was incompetent to prove the official character of the documents introduced in evidence through him. In any event, Exhibit 17 was clearly proved not to have any official standing, and Exhibit 16 should be regarded as not having official standing.

D. Schneiderman's familiarity with the documents.

In general, as to familiarity, Schneiderman testified:—"my familiarity with writings at that time" (when he became a citizen), "was limited to the writings of Marx, Engels and probably Lenin." "I do not believe that any of the Stalin writings were in circulation or in use at that particular time" (R. 898).

Exhibit 7—Schneiderman testified that he was familiar with the authorized English translation of the

Communist Manifesto published in 1932 (R. 123). The Communist Manifesto was used in the classes he organized in 1922-1925 (R. 89).

Exhibit 8—Schneiderman was not asked, nor did he state, that he had ever read Exhibit 8, "The State and Revolution" (R. 89, 127-128); but it may be inferred that he had done so at some date.

Exhibit 9—Schneiderman testified that he was familiar with this Exhibit (R. 143). He stated that it was used in the classes of the Young Workers' League (R. 89).

Exhibit 11—Schneiderman testified that he was familiar with the Theory and Practice of Leninism by Stalin, though not familiar with the "particular edition" presented as an exhibit (R. 158); "* * * I am sure I read the work; but this particular edition I am not familiar with" (R. 159-160). He personally did not use it and did not observe it in the Communist book stores (R. 159). The record does not show when Schneiderman had "read the work." He did not think it was used in classes he organized (R. 89).

Exhibit 12—Schneiderman testified that he was not familiar with that exhibit or its contents (R. 160).

Exhibit 13—Schneiderman testified that he was not familiar with that exhibit or its contents (R. 161, 883).

Exhibit 16—Schneiderman testified that he was familiar with this exhibit but he was not asked nor did he state when he became familiar therewith (R. 163).

Exhibit 17—Schneiderman, on direct, testified that he had read some of the issues of this particular magazine but could not vouch for having read this particular one (R. 164). On re-direct, he said "I have no doubt that I have read it,

although I must have been fifteen or sixteen years old when I read it, and I would not recall everything in it" (R. 835).

Exhibit 27—Schneiderman testified that he was not personally familiar with that document (R. 836-837).

Exhibit 26—*for identification.* There is nothing in the record to show that Schneiderman had read or was familiar with the contents of this particular book (R. 836).

On the basis of this analysis we respectfully submit that the Court must dismiss from consideration:—

Exhibits 12, 13 and 27, because the proof is affirmative that Schneiderman was not familiar with them; and

Exhibit 8, because Schneiderman was not shown to have read the document before 1927, and

Exhibit 11, because Schneiderman was not shown to have been familiar with it prior to 1927, and

Exhibit 17, because of the very slight familiarity of Schneiderman with this document which was not an official publication.

As to the documents as to which there was clear proof that they were both published and circulated prior to 1927, to wit, Exhibits 7, 9, 16, 17 and 27 (see p. 17 above), the proof was *affirmative* that he was *not familiar* with Exhibit 27, so that document is out. This leaves only Exhibit 7 (the Communist Manifesto), Exhibit 9 (Left Wing Communism, by Lenin) and Exhibit 16 (the A. B. C. of Communism), and perhaps Exhibit 17.

On the basis that the proof on which Schneiderman's citizenship may properly be cancelled must be clear and conclusive, the Court should certainly exclude Exhibit 16 for lack of proof as to the date when Schneiderman was familiar with it. Further, the Court should exclude Exhibit

16 from consideration because the "book was never accepted as an authorized version, and it was subsequently barred from use in all of our schools and open forums and discussions. * * * and later, the authors and editors were expelled from the Communist Party—That is, not from the Communist Party of America, but from the Communist Party of Russia" (R. 163-164).

As documents (a) clearly published prior to 1927 and with (b) respect to which sufficient familiarity therewith by Schneiderman was shown to make the same relevant, there thus remains only the Communist Manifesto (Ex. 7), and *Left Wing Communism,* by Lenin (Ex. 9).

E. The excerpts from the relevant documents.

As we have pointed out in our supplemental brief (p. 4), counsel for the Government, in connection with offering exhibits at the trial, made the following statement to the Court and to counsel for Schneiderman: "We have made certain excerpts, Mr. Andersen, from the book which we have offered in evidence for the purpose of convenience, of which we will furnish you a copy for * * * in the preparation of briefs *so that you will know what particular part of the book we rely on*" (R. 109). Such excerpts were furnished, and were the only parts of the documents designated by the Government for the record, except only with respect to Exhibit 27, which was printed in the record in full.

Therefore, on the basis of the presentation made to the trial court, and on the basis of the record as prepared for the Circuit Court of Appeals within its Rule 19, the *excerpts* from the pertinent documents with which Schneiderman was familiar are the only portions of those documents constituting the real proof before the Court—so far as the documents are concerned. Since, as above shown, the only

documents that can, on the record, with propriety be considered as meeting the tests that (a) they were both published and circulated prior to 1927, and (b) that Schneiderman was familiar with them prior to 1927 and (c) that they were publications having some authoritative standing (this test excludes Ex. 17) are at very best Exhibits 7, 9 and 16, and since Exhibit 16 was barred as an expression of Communist doctrine, the Court is, we submit, limited to a consideration of the bearing on the questions here of the *excerpts* from Exhibit 7 (R. 124-127) and the excerpts from Exhibit 9 (R. 144-147).